

ARTICLE

OVERVIEW OF THE MAIN PROVISIONS PROVIDED BY THE ORDINANCES DATED MARCH 25TH, 2020 REGARDING THE ONGOING TAX PROCEDURES

Private Equity Private Clients Tax Law | 30/03/20 | Xavier Rohmer

LIFE SCIENCES & HEALTHCARE

The n° 2020-290 Emergency Law dated March 23rd, 2020 aimed at addressing the Covid-19 epidemic, empowers the French Government to take within a period of three months following its publication, any measure in the field of the Law, in order to precise in particular, the arrangements for the adjustment of the administrative (and therefore tax) and judicial procedures during the Covid-19 epidemic.

Twenty-five ordinances were adopted pursuant to this Law and adopted by the Council of Ministers held on March 25th, 2020 and published in the French Official Journal of March 26th, 2020, some of them triggering specific tax consequences such as the n°2020-306 Ordinance relating to the deadlines expired during the period of health emergency and to the adaptation of procedures during this same period and the n°2020-305 Ordinance adapting the rules applicable before the administrative courts.

The purpose of this note is to clarify from the sole point of view of the pre-litigation and litigation tax procedure, the main provisions of the n°2020-306 Ordinance relating to the expired deadlines during the period of health emergency and to the adaptation of procedures during this same period, this latter including in particular an article 10 specific to tax issues.

First of all, Article 1 of the n°2020-306 Ordinance relating to the expired deadlines during the period of health emergency and to the adaptation of procedures during this same period, provides that the deadlines concerned by the Ordinance are *“those that expire between March 12th, 2020 and the expiration of a period of one month from the termination date of the state of health emergency and, that could be extended as the case may be (...)”*. **In other words, for the time being and subject to a possible extension of the duration of the state of public health emergency, the deadlines concerned are those expiring between March 12th and June 24th, 2020 (hereinafter, the “Reference Period”**).

1- Deferral of the deadlines expired during the Reference Period (Article 2)

Article 2 of the n°2020-306 Ordinance relating to the extension of the deadlines expired during the period of health emergency and to the adaptation of the procedures during the same period contains a general provision providing for a deferral mechanism of the legal deadlines in the following terms:

“Any act, appeal, legal action, formality, registration, declaration, notification or publication laid down by the law or regulation, that would be subject to nullity, sanction, foreclosure, statute of limitations, unenforceability, expiry, automatic withdrawal if not complied with or required for the application of a specific regime or to avoid the forfeiture of any right, and which should have been completed during the period set forth by Article 1, shall be deemed to have been done on due date if it has been done within a period which may not exceed, as from the end of that period, the corresponding period legally prescribed to perform this action, up to a maximum of two months (emphasis added). The same shall apply to any payment prescribed by law or regulation for the acquisition or preservation of a right.”

This provision does not remove the possibility of carrying out any act or formality whose term expires during the Reference Period but it provides that the act which will have been carried out within the additional deadline will be not considered as being late (this last clarification is important to preserve the eligibility of taxpayers to the benefit of favourable tax regimes or procedures the related conditions of which require that the initial tax returns were subscribed on due date, as it is the case for example to benefit from the regularization procedure in the course of a tax audit such as provided by Article L.62 of the French Tax Procedures Code (“FTPC”) – French administrative guidelines BOI-CF-IOR-20-10, n°60).

As a result, all periods to be expired during the Reference Period will start running again for their initial legal duration the day after the end of the Reference Period, up to a maximum limit of two months, without prejudice of any derogating provision. This two-month period, which is the common deadline to appeal against administrative decisions under the ordinary administrative procedure, applies to all levies of a fiscal nature. Deadlines having expired before March 12th, 2020 shall not be extended.

Example : A company received the refusal decision of its tax claim on March 5th, 2020 and thus has to file its claim before the court within a two-month period from the notification receipt of the tax authorities' decision, this period expiring on the day of expiry at midnight, i.e. on May 6th, 2020 at midnight. The deadline to lodge an appeal should thus expire during the Reference Period, so that according to Article 2 of the n°2020-306 Ordinance, the claim shall be sent by this company to the Administrative Court in principle until August 24th, 2020 (or August 25th, 2020



depending on whether the extension period will be considered as a clear deadline or not, this point having to be clarified by the tax administration). This period being of two months, it will be included for its full duration within the limit provided for in Article 2.

A few remarks at this stage on these provisions:

- This extension mechanism results from special measures, which were already implemented by the French legislator in the past, in particular during the events of May-June 1968 (Act n° 68-696 dated July 31st, 1968) and the postal strike of October-November 1974 (Act n° 74-1114 dated December 27th, 1974);
- The provisions were necessary in order to tackle the application of the usual procedure rules according to which a late application is in principle subject to foreclosure. Indeed, this principle being of public order, the Administrative Court cannot discard the forfeiture incurred by the claiming party and has to oppose it systematically, and even if the tax authorities do not raise this argument, the tax authorities' waiver to invoke it being void;
- Subject to the confirmation of this interpretation of Article 2 by the tax administration, it does not deal with a "suspension" of deadlines because the days elapsed before the beginning of the Reference Period in execution of the two-month period should not be taken into account for the computation of the deadline after the end of the Reference Period. The counters will be "reset to zero" at the end of the Reference Period;
- In the case where a company would not have received any explicit rejection of its claim after the expiry of the six-month period given to the French tax authorities to reply, it is not bound by any deadline at this stage, this situation remaining in its favour as it has the mere possibility to lodge its claim with the Administrative Court but not the obligation as long as it is not notified the explicit decision of rejection from the French tax authorities;
- An uncertainty exists relating to the combination of the two-month limit with the additional period of time granted for distance reason (two additional months is granted to a claiming party the residence of which is located abroad, which extends in principle the deadline to lodge the claim to four months). Clarification from the French tax authorities on this issue would be welcome;
- Similarly, it would be useful that the French tax authorities confirm that the special deadlines applicable under various favourable tax regimes are covered by this deferral (e.g. commitment to build, resell or reinvest within a limited legal period of time in order to benefit from the reduction of registration duties for the acquisition of real estate, or from the deferral of taxation on a capital gain);
- Finally, as the deferral is provided for the completion of certain administrative formalities prescribed "by the law or regulation", it would be useful that the French tax authorities precise if the formalities related to the execution of transactions concluded with the tax administration (Article L. 247 of the FTPC) are included or not in the scope of Article 2.

2- Suspension of the deadlines granted to the French tax authorities to issue a decision, an agreement or an opinion, which did not expire before March, 12th 2020 (Article 7)

The suspension of these deadlines safeguard in particular the French tax authorities' investigation deadlines mainly regarding procedures in which the French tax authorities' silence is considered as an approval from the French tax administration, which is the case for example, of the (optional) ruling requests regarding restructuring carried out since January 1st, 2018 in order to ensure that they are not likely to fall into the scope of the abuse of right or those aimed at confirming the absence of permanent establishment in France to a foreign company.

The starting point of similar periods that should have started running during the Reference Period is postponed until the end of the Reference Period.

3- Suspension as of March 12th, 2020 of the statute of limitation of the French tax authorities regarding all taxes in the case where the statute of limitations had to be acquired by December 31st, 2020 (Article 10 I.1°)

In practice, this measure allows the French tax authorities to keep the possibility to notify tax reassessments in respect of the 2017 financial year for which tax audits could be already or not in progress. This measure, while legitimate, shows that companies must remain vigilant on these points even during the health emergency period in order to better anticipate it with their advisors. In principle, the initial statute of limitation will keep running again as from June 24th, 2020 (provided that the Reference Period is not extended). Notifications shall be thus "shifted" accordingly, up to the duration of the Reference Period.

4- Suspension as of March 12th, 2020 of the deadlines granted to the French tax administration and to the taxpayers within the framework of tax audits



This measure suspends, during the same Reference Period, both for the taxpayers and for the tax administration, all the deadlines applicable within the framework of tax audits and investigations for tax purposes, without requiring any decision from the French tax authorities.

5- Absence of deferral of the deadlines expiring during the Reference Period concerning the French Income Tax and the French Corporate Income Tax - CIT

Article 10, II of the n°2020-306 Ordinance provides that *"the provisions of Article 2 shall not apply to the tax returns required for the assessment, computation and collection of taxes and duties"*.

This very broad exclusion from the deferral mechanism applicable to the reporting deadlines regarding all taxes and duties, is not surprising since, at this stage, the filling deadlines for CIT, income tax and VAT in particular were announced as being kept unchanged for the time being, as the Minister of Public Action and Accounts, Gérald Darmanin, and the General Director of Public Finance, Jérôme Fournel, confirmed it during their joint press conference held on March 24th, 2020. However, it does not rule out the possibility for the French tax authorities in the forthcoming weeks, to postpone these deadlines if the evolution of the epidemic requires it.

6- Suspension of deadlines for the recovery and contestation of public claims

The deadlines applicable to the recovery and contestation of public receivables which have to be complied with to avoid a nullity, lapse, foreclosure, prescription, unenforceability or forfeiture of right or action shall be suspended until the end of two months period following the end of the Reference Period, **i.e. until August 24th, 2020**. Proceedings should thus be suspended during the crisis period.

